

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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|---------------------------|---|----------------------------|
| Antione J. Lott, |) | |
| |) | |
| Petitioner, |) | Case No.: 2:10-cr-1095-PMD |
| |) | |
| v. |) | <u>ORDER</u> |
| |) | |
| United States of America, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

Antione J. Lott, a federal prisoner, moves to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 (ECF No. 51). The United States (“Government”) has filed a motion to stay this matter (ECF No. 59). For the reasons stated herein, the Court grants the Government’s motion.

In his § 2255 motion, Lott challenges this Court’s decision to sentence him as a career offender under the United States Sentencing Guidelines. *See* U.S.S.G. §§ 4B1.1, 4B1.2(a) (2011). The Court based that decision in part on Lott’s prior conviction in South Carolina state court for assault and battery with intent to kill (ABWIK). Lott argues that after *Johnson v. United States*, 135 S. Ct. 2551 (2015), his career-offender designation is unconstitutional and therefore he must be resentenced. More specifically, Lott contends his ABWIK conviction cannot validly constitute a predicate “crime of violence” under the residual clause of § 4B1.2(a)(2) because *Johnson* has held identical language to be unconstitutionally vague. Lott then contends his ABWIK conviction cannot fall under the remaining portions of § 4B1.2(a). If Lott is correct on these points, then he may no longer have enough predicate offenses to trigger the career-offender enhancement.

The Supreme Court is currently poised to decide whether *Johnson*'s holding extends to U.S.S.G. § 4B1.2(a)(2) and whether *Johnson* applies retroactively to collateral challenges of sentences enhanced using § 4B1.2(a)'s residual clause. *See Beckles v. United States*, 616 F. App'x 415 (11th Cir. 2015), *cert. granted*, 2016 WL 1029080 (U.S. June 27, 2016) (No. 15-8544). The Government contends the Supreme Court's decision in *Beckles* will affect the outcome of Lott's § 2255 motion and therefore this Court should stay proceedings until that decision is issued.

Waiting for *Beckles* is warranted only if Lott's ABWIK conviction cannot fall under § 4B1.2(a)'s force clause. The Fourth Circuit is currently considering whether South Carolina's crime of assault with intent to kill (AWIK) falls within that force clause. *See United States v. Waters*, No. 4:15-cr-158-BHH (D.S.C.), *appeal docketed*, No. 16-4214 (4th Cir. Apr. 18, 2016). Because AWIK is a lesser-included offense of ABWIK, *see Suber v. State*, 640 S.E.2d 884, 886–87 (S.C. 2007), the outcome of *Waters* has just as much potential to impact Lott's motion as *Beckles*.

Because *Beckles* and *Waters* both have great potential to control the outcome in this matter, the Court **GRANTS** the Government's motion and **STAYS** this matter until decisions are issued in both *Beckles* and *Waters*. The stay shall expire automatically once both of those decisions are issued. However, once the first of the two decisions is issued, either party may move to lift the stay.

AND IT IS SO ORDERED.


 PATRICK MICHAEL DUFFY
 United States District Judge

October 3, 2016
Charleston, South Carolina